IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.328 OF 2004

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Maharashtra State Electricity
Board ...Petitioner

v/s.

Maharashtra conductors
Association (SSI) ...Respondent

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Mr.P.P. Chavan i/b Little & Co. for the Petitioner.

Mr.D.H. Mehta i/b N.M. Shah for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 30th August,2004

P.C.:

1. By this petition the Petitioner challenges the award dated 30-4-2004 made by the learned Arbitrator directing the Petitioner/ MSEB to make payment of

interest. Payment of interest has been directed to be made by the learned arbitrator in view of the provisions of "the Interest on Delayed Payment to Small Scale and ancillary Industrial Undertakings Act, 1993".

2. The dispute arises thus, the Maharashtra Conductor Association filed a writ petition in this court against M.S.E.B. for payment of interest under the provisions of the aforesaid Act. In that writ petition consent terms were arrived at. The consent terms reads as under:-

CONSENT TERMS

1. The Petitioners and Respondents No.2 agree to refer to a sole Arbitrator for arbitration, under the provisions of the Arbitration and Conciliation Act, 1996, the dispute relating to the claim of interest made by the members of the petitioner in respect of the delayed payment of price for the goods supplied to Respondent No.2, (under the provisions of the interest on Delayed payments to Small Scale and

ancillary Industrial under takings Act 1993) in respect of contract No. T-0901 & T-0805.

2. The parties agree that Mr.Justice M.L. Pendse, Former Chief Justice of Karnataka High Court be appointed as sole Arbitrator.

3. All the contentions are kept open.

3. It is, thus, clear that the dispute between the members of the Petitioner's Association and the M.S.E.B. in respect of the delayed payment of price of the goods supplied to the Respondent and liabilities arising therefrom under the aforesaid Act were referred to the learned sole-arbitrator.

4. It appears that before the learned Arbitrator an objection was raised that so far as one of the parties by name KJV Alloy Conductors Pvt.Ltd. is concerned is not entitled to lodge its claim before the arbitrator. The objection to the jurisdiction of the learned arbitrator to entertain their claim was on the ground that offer was made by that party

separately. It was not the objection that that party is not a member of the Maharashtra Conductor Association who had filed the Writ Petition. The objection was overruled by the learned Arbitrator.

5. The first challenge to the award before me was that the objection has been wrongly overruled by the learned arbitrator. Perusal of the consent terms quoted above arrived at between the parties before this court makes its clear that the disputes between the members of Maharashtra Conductor association and the MSEB in relation to claim of interest under the Act were referred to arbitration. Therefore, the only objection that could have been raised was that the above referred party was not the member of the Petitioner's association. But that objection was not raised and an objection was raised on the ground that the offer was submitted by that party separately and supply was made independently by that party. In my opinion, that offer and supply was made independently by the party is a totally irrelevant aspect. It is clear from the arbitration clause that only two things were relevant for deciding the jurisdiction of the arbitrator. (i) whether the concerned party was a member of the

Maharashtra Conductor Association and (ii) whether the claim related to interest under the above referred Act. Therefore, in my opinion, the very objection raised to the jurisdiction of the learned arbitrator was totally misconceived and misdirected and therefore it was rightly rejected by the learned Arbitrator.

6. It was next contended that the members of the association will not entitled to payment of interest because there was an agreement reached between the members of the association and the M.S.E.B. that the M.S.E.B. waives its rights to recover liquidated damage for delayed supply of material by the contractors and the contractors give up their rights or entitlement to claim interest for delayed payments. The learned arbitrator has considered this aspect and has held that the MSEB has not produced anything in support of its contention that the liquidated damages were waived by the MSEB because of the assurance of the suppliers that interest as per the provisions of the Act will not be claimed. The learned Counsel appearing for the MSEB, however, made a grievance that the arbitrator in recording that finding has not perused the

correspondence, and therefore, he took me to two letters, one is dated 5-5-2000 from Bombay Wire Products, who is one of the suppliers. In that letter the supplier states that though the supplier has supplied goods worth 45 lakhs, no payment has been made by the MSEB.

> "We have contacted Honourable Accounts Member for our due payments. He informed us that due to shortage of funds our payment can not be released. We expressed him our difficulty to continue to supply unless timely payment are received against which he advised us to get the Delivery Reschedule for balance Qty. For smooth execution of order we request you to please reschedule our delivery period for balance unexecuted Qty. of 2401 Kms AAC ‘ANT’ and 900 Kms AAC ‘GNAT’ as under:
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> First lot of 200 Kms within Two months from the date of receipt of reschedule letter and balance @ 200 Kms per month thereafter.

The reschedulement may please be accorded with update price variation and without liquidated damages, allowing statutory variation.

7. The second letter to which my attention was invited by the learned Counsel is letter dated 25th July, 2000. It reads as under:-

"With reference to the above, it is to inform you that the delivery period for supply of AAC Ant, Gnat Conductor against our above order stands rescheduled with price variation & statutory variation in taxes & duties but without levy of liquidated damages for the balance quantity of 2401 KMs of AAC Ant & 900 KMs of Gnat conductor as under:

Commencement of first lot of 200 KMs in assorted sizes of AAC Ant or Gnat conductor within 2 months from the date receipt of this letter.

Supply shall be completed @ 200 KMs in

assorted size per month, thereafter.

Further you are requested to invariably furnish consigneewise details of upto date details of supplies indicating S.r. Note No. and date, if received or otherwise on or before 5th of every month.

This is issued without prejudice to other terms and conditions of the above order.

This is a letter from M.S.E.B. in response to the letter dated 5-5-2000. Attention was not invited to any other documents. Now reading of these two letters can in no way lead anybody to the conclusion that the suppliers had ever promised to give up their claim for interest in lieu of MSEB giving up their claim of liquidated damages. On the contrary, it shows that MSEB was not in a position to claim liquidated damages because the delay in supply was occurring because of delay on the part of the MSEB in making the payment. It is, thus, clear that the finding has been correctly recorded by the learned Arbitrator that there is no evidence placed on record by M.S.E.B. to support its contention that

the suppliers had given up their entitlement to claim interest under the Act. I find that this is a most frivolous petition, which should not have been filed by the M.S.E.B. The M.S.E.B. is a public authority, dealing in public funds. Merely, because at the disposal of its officers there are public funds they should not be permitted to indulge in such litigation. They should not flood the court with such frivolous petition. In fact, in my opinion, there is a duty cast on them to see that they should approach the court only in such cases where they have a strong case. In my opinion, therefore, merely an order dismissing this petition will not serve the interest of justice, but exemplary costs should be imposed on M.S.E.B. While imposing exemplary costs against the M.S.E.B., I am alive to the fact that it is a public authority and this amount of costs will be paid from the public funds. But still I inclined to make the order in the hope that higher officer from the M.S.E.B. will wake up to find out as to how and in what circumstances the decision to file this petition was taken and how that decision was justified, take some action against those who are found responsible for the same.

8. In the result, therefore, the petition is dismissed. The Petitioner/M.S.E.B. is directed to pay as and by way of costs of this petition Rs.1,00,000/- (Rupees one lakh only) to the Respondent.

Parties to act on ordinary copy of the order duly authenticated by the Associate/ Personal Secretary of the Court as a true copy.

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